

Charges for shipping are gross receipts subject to ROT when they are part of the selling price of the tangible personal property being sold. See, 86 Ill. Adm. Code 130.415. (This is a GIL).

June 28, 2002

Dear Xxxxx:

This letter is in response to your letter that we received on April 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am writing to inquire about calculating sales tax on sales to companies in your state. We sell machinery equipment used in the manufacturing process for glass windows, repair parts and customized software. Our only physical location is in STATE. Our orders are obtained by salespeople visiting the customers and by phone orders.

In billing our customers I would like to know if the following are taxable and at what rate:

- machinery used in manufacturing process
- labor to install equipment
- freight by common carrier
- repair and replacement parts
- labor to repair equipment
- maintenance contracts

Each of these items is separately referenced on the invoices.

Please reply to the above and send a brochure on sales tax for our records.

If you need further clarification, please contact me.

Please review the following guidelines to determine whether your company is an Illinois retailer or a "retailer maintaining a place of business in Illinois." An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax (sales tax) on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. The State rate is 6.25% and local Retailers' Occupation Taxes may also apply depending upon the location of the sale.

The definition of a "retailer maintaining a place of business in Illinois" is described in Sec. 150.201(i), a copy of which is enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See the enclosed copy of 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax, measured on 6.25% of its gross receipts, to the State on behalf of its Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

Enclosed is a copy of 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption. The Retailers' Occupation and Use Taxes do not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. In order to document the exemption, the user of such machinery and equipment must supply an exemption certificate to the retailer as provided in 86 Ill. Adm. Code 130.330(g)(1). The user may provide an active registration or resale number in lieu of the prescribed certificate.

Please be advised that when tangible personal property is sold at retail and the seller installs such tangible personal property for the purchaser, the installation charges are included in gross receipts subject to tax unless they are the subject of a separate agreement. A separate agreement would include an invoice that separately lists the installation charge and is also signed by the customer. See 86 Ill. Adm. Code 130.450, enclosed.

Whether freight charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such freight or delivery charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers. The best evidence that delivery charges were agreed to separately and apart from selling prices, are separate and distinct contracts for freight or shipping. Alternatively, documentation in the records of sellers that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice.

Repair and replacement parts for exempt manufacturing equipment are also generally exempt. If a business repairs equipment that is not exempt and transfers parts or other tangible personal property as an incident of the repair service, the transaction would generally be subject to liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101.

Please be informed that charges for maintenance agreements that are included in the selling price of tangible personal property are part of the gross receipts of sale that are subject to tax. However, maintenance agreements that are not included as part of the selling price of tangible personal property but are sold as separate agreements for predetermined fees are not part of the gross receipts of sales that are subject to Retailers' Occupation and Use Tax liability. The servicemen that provide service under the separate maintenance agreements are required to pay Use Tax to their suppliers on their cost price of the tangible personal property that is transferred incident to the completion of the maintenance agreements. See 86 Ill. Adm. Code 140.141 and 140.301(b)(3).

There are several publications available for viewing or downloading at the Department of Revenue's Web site, which can be accessed at www.revenue.state.il.us. An example is the Department's Taxpayer Services and General Information Guide.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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